U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 15777267

Date: JULY 28, 2021

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a nurse practitioner, seeks classification as a member of the professions holding an advanced degree and as an individual of exceptional ability in the sciences, arts, or business. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner qualifies for classification as a member of the professions holding an advanced degree, but that she had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, USCIS may, as a matter of discretion,[1] grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, regarding substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual's education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign

[1] *See also Poursina v. USCIS*, 936 F.3d 868 (9th Cir. 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.[2]

II. ANALYSIS

The record demonstrates that the Petitioner qualifies as a member of the professions holding an advanced degree; her occupation qualifies as a profession, and she holds a master's degree in nursing from the State University of [redacted] The accompanying claim of exceptional ability is moot. The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

After working for several years as a registered professional nurse in Taiwan and as a health care assistant in the United Kingdom, the Petitioner entered the United States in 2016 to study for her master's degree. While in the United States as an F-1 nonimmigrant student, she worked as a nurse at [redacted] Hospital in [redacted] In March 2019, the same month she filed the petition, she began working as a nurse practitioner for [redacted] which operates several clinics in [redacted].[3]

The Director concluded that the Petitioner established the substantial merit of her proposed endeavor, but not its national importance. The Director also concluded that the Petitioner had not satisfied the second and third prongs under *Dhanasar*. For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently demonstrated the national importance of her proposed endeavor under the first prong of the *Dhanasar* analytical framework.[4]

The Petitioner initially asserted that her "advanced medical training has had a substantial impact on the field of health," but the Petitioner did not elaborate on this claim. The Petitioner noted that, during her graduate studies, she [redacted] in elderly adults," but she provided no evidence that this paper has affected the diagnosis or treatment of [redacted] in such patients, and she did not specify what new information the paper contributed to the field.

The Petitioner submitted letters in support of her petition, which, for the most part, addressed her work with patients. The president and chief executive officer of [redacted] asserts that the Petitioner can "assist with the immediate problem America is facing with its physician shortage" and serve as a mentor to future nurse practitioners. An adjunct professor at [redacted] states that he is "confident that she . . . will also be a successful researcher in [the] future," but the Petitioner's own statement described no future research plans. She stated, instead, that she intended to continue providing patient care in the [redacted] area. Her employment agreement with [redacted] specifies that she "will be seeing patients with acute illness usually associated with an allergic problem."

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[2] *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

[3] [redacted] filed an immigrant petition in March 2021 on behalf of the individual who self-petitioned in the present proceeding. That petition was approved shortly after its filing.

[4] While we may not discuss every document submitted, we have reviewed and considered each one.

The Director requested evidence to show the national importance of the proposed endeavor. In response, the Petitioner asserts that "tak[ing] care of people's health . . . is obviously of national importance," and that various government entities have acknowledged the importance of nurse practitioners in the nation's health care system. The *collective* importance of *all* nurse practitioners addresses the issue of substantial merit, which the Director granted. The issue now is whether this individual petitioner's proposed endeavor is, by itself, of national importance. When discussing this issue, it is important to distinguish between this Petitioner's proposed endeavor in particular, and the overall occupation of nurse practitioners in general.

An endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance. *Dhanasar*, 26 I&N at 890. The Petitioner contends that her proposed endeavor fits this description, because she earned her master's degree in a "nurse practitioner program . . . focusing on rural and underserved populations," and her "good rapport with patients" could attract more patients, which would lead to increased hiring by her employer as the practice grows. The Petitioner has submitted no documentation or other evidence to support her speculative assertion that her relationship with patients would result in increased job creation or other economic benefits.

In the denial notice, the Director acknowledged the overall importance of the Petitioner's occupation, but concluded that the Petitioner had not shown "that the effects of [her] employment will be felt beyond the current confines of her employment with [redacted]."

On appeal, the Petitioner asserts that her proposed endeavor is of national importance because of the COVID-19 pandemic. The Petitioner notes that Section 2(b)(ii) of the President's *Proclamation Suspending Entry of Immigrants Who Present Risk to the U.S. Labor Market During the Economic Recovery Following the COVID-19 Outbreak* (Apr. 22, 2020) exempted "any alien seeking to enter the United States on an immigrant visa as a physician, nurse, or other healthcare professional" from the suspension. The proclamation did not, however, exempt such individuals from existing requirements and policies. It indicated only that healthcare professionals who *already have* such visas would not be affected by the suspension.

Likewise, the Petitioner contends that her work is of comparable importance to that of physicians and nurses, occupations for which benefit from special immigration provisions. Specifically, that physicians may qualify for the national interest waiver under section 203(b)(2)(B)(ii) of the Act, and Schedule A, Group I designation is available to professional nurses through procedures described in Department of Labor (DOL) regulations at 8 C.F.R. § 656.15(c)(2). These provisions, however, are not national interest waivers under the *Dhanasar* framework. Section 203(b)(2)(B)(ii) of the Act, which creates a shortage-based waiver independent of *Dhanasar*, applies only to physicians and USCIS has no discretion to broaden its provisions. Designation under Schedule A, Group I, is not a national interest waiver, and a petition seeking that designation must be filed by the intending U.S. employer, not by the beneficiary. *See* 8 C.F.R. § 204.5(k)(1).

The Petitioner asserts that her submission of prior authorization forms allowed economically disadvantaged patients to receive prescription medications for free, or at a reduced price. She does not explain how this activity is of national importance. Benefit to individual patients does not automatically show national importance.

The Petitioner contends that, because she has worked abroad and is fluent in a second language, she has "a broader perspective and a broader view of the world." She does not explain how this trait gives her proposed endeavor national importance under the *Dhanasar* standard.

The Director stated that the Petitioner did not establish that she "is practicing on a national level" or that her efforts have a broader influence that would give her work national importance. For instance, the Director stated that the Petitioner did not show that she "is participating in national or international level activities such as presenting at conferences or national or international committee work."

On appeal, the Petitioner asserts that she "has participated in many conferences." She lists 15 such conferences between 2016 and 2019, all in [redacted]. The Petitioner shows that she *attended* these conferences, but not that she gave presentations (which would involve dissemination of her work to others in the field). Certificates in the record indicate that she attended at least some of these conferences as part of continuing education requirements, a mandatory condition of licensure. The Petitioner's attendance at these local and regional gatherings does not establish the national importance of her proposed endeavor.

For the reasons discussed, we conclude that the Petitioner has not established the national importance of her proposed endeavor. Because this issue, by itself, determines the outcome of the appeal, we decline to reach, and hereby reserve, the appellate arguments regarding the remaining issues.[5]

III. CONCLUSION

Because the Petitioner has not met the required first prong of the *Dhanasar* analytical framework, we conclude that she has not established eligibility for a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.

[5] *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).